

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FREDRICK CAPPS	:	
2734 Bellview Drive	:	
Bensalem, PA 19020	:	CIVIL ACTION
Plaintiff,	:	No. _____
v.	:	
MONDELÉZ INTERNATIONAL, INC.	:	<b>JURY TRIAL DEMANDED</b>
12000 Roosevelt Boulevard	:	
Philadelphia, PA 19116	:	
Defendant.	:	

**CIVIL ACTION COMPLAINT**

Plaintiff, by and through his undersigned counsel, hereby avers as follows:

**INTRODUCTION**

1. This action has been initiated by Frederick Capps (hereinafter referred to as "Plaintiff," unless indicated otherwise) against Mondelēz International, Inc. (hereinafter referred to as "Defendant" unless indicated otherwise) for violations of the Family and Medical Leave Act ("FMLA" - 29 U.S.C. §§ 2601 *et. seq.*).<sup>1</sup> As a direct consequence of Defendant's unlawful actions, Plaintiff seeks damages as set forth herein.

**JURISDICTION AND VENUE**

2. This Court has original subject matter jurisdiction over the instant action pursuant to 28 U.S.C. §§ 1331 and 1333(a) (4) because it arises under the laws of the United States and

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<sup>1</sup> Plaintiff will move to amend the instant lawsuit to include claims currently pending before the Equal Employment Opportunity Commission and the Pennsylvania Human Relations Commission relating to very similar allegations as alleged herein (but under the Americans with Disabilities Act, as amended, and the Pennsylvania Human Relations Act). Plaintiff is currently unable to simultaneously file such claims, as they are not fully administratively exhausted before said agencies.

seeks redress for violations of federal laws. There lies supplemental jurisdiction over Plaintiff's state-law claims because they arise out of the same common nucleus of operative facts as Plaintiff's federal claims asserted herein.

3. This Court may properly maintain personal jurisdiction over Defendant because its contacts with this state and this judicial district are sufficient for the exercise of jurisdiction over Defendant to comply with traditional notions of fair play and substantial justice, satisfying the standard set forth by the United States Supreme Court in *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) and its progeny.

4. Pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2), venue is properly laid in this district because all of the acts and/or omissions giving rise to the claims set forth herein occurred in this judicial district, and Defendant is deemed to reside where it is subject to personal jurisdiction, rendering Defendant a resident of this district.

#### PARTIES

5. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

6. Plaintiff is an adult individual, with an address as set forth in the caption.

7. Defendant is an American multinational confectionery, food and beverage conglomerate, with locations throughout the world including one where Plaintiff was employed in Philadelphia, Pennsylvania.

8. At all times relevant herein, Defendant acted by and through its agents, servants and employees, each of whom acted at all times relevant herein in the course and scope of their employment with and for Defendant.

**FACTUAL BACKGROUND**

9. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.
10. Defendant hired Plaintiff as a mixing technician on or about November 8, 1989.
11. Plaintiff was continuously employed by Defendant for approximately 25 years until Defendant eventually terminated his employment on or about March 22, 2014 (discussed further *infra*).
12. Plaintiff has and continues to suffer from physical impairments including but not limited to circulatory system problems, degenerative-bone disease, and various other impairments and limitations.
13. Several years prior to Plaintiff's aforementioned termination, Plaintiff had surgery to replace both of his hips due to his health conditions.
14. Plaintiff's aforementioned health conditions have and continue to severely limit his enjoyment of major life activities including but not limited to - at times - standing, running, exercising, and working.
15. Following Plaintiff's aforementioned hip surgery, he began to occasionally have days where he would experience excruciating pain and would be unable to stand for an extended period of time.
16. Plaintiff's position as a mixing technician required him to stand for the vast majority, if not the entirety, of each shift while worked for Defendant.
17. Plaintiff applied for and was approved for intermittent leave pursuant to the Family Medical Leave Act ("FMLA").

18. Plaintiff followed Defendant's procedure for taking intermittent FMLA leave during his employment with Defendant.

19. Plaintiff infrequently took intermittent FMLA-qualifying leave following his surgery until the eventual end of his employment with Defendant.

20. On or about February 14, 2013, Plaintiff experienced extreme pain due to his medical conditions and informed Defendant's management that he would be taking an FMLA qualifying leave that day because his pain would prevent him from being able to stand for an extended period of time.

21. On the evening, of February 14, 2013, Plaintiff drove to a restaurant approximately 1 - 2 miles away from his home.

22. Plaintiff ate at the restaurant and consumed some alcoholic beverages.

23. During his drive home, Plaintiff was stopped by the police and issued a citation for driving under the influence of alcohol.

24. A hearing was scheduled for Plaintiff's DUI charges on or about June 6, 2013.

25. Plaintiff waived the aforementioned hearing that had been scheduled on or about June 6, 2013.

26. Plaintiff experienced flare-ups of his medical conditions in or about the week of June 6, 2013 and took approximately two days off of work pursuant to the FMLA.

27. On or about February 26, 2014, Defendant's management informed Plaintiff that he was being suspended because they did not believe that the FMLA time that Plaintiff took in February of 2013 (over one year earlier) was actually attributable to Plaintiff's health conditions.

28. Plaintiff's aforementioned suspension continued until Defendant's management terminated his employment on or about March 22, 2014.

29. Defendant's management told Plaintiff that he was terminated for taking days off of work under the guise of FMLA when they were not actually FMLA qualifying in February 2013.

30. Plaintiff did not misuse any FMLA days during his employment with Defendant, and he was specifically terminated for taking time off for medical reasons, for time that had been previously approved as FMLA time by Defendant, and without Defendant obtaining to obtain any contrary medical evidence or evaluation whatsoever.

31. Plaintiff was explicitly told that he was being terminated for days in which he was previously approved by Defendant for FMLA absences, which constitutes direct evidence of interference and retaliation.

**COUNT I**  
**Violations of the Family & Medical Leave Act ("FMLA")**  
**(Interference & Retaliation)**

32. The foregoing paragraphs are incorporated herein in their entirety as if set forth in full.

33. Plaintiff was employed with Defendant for approximately 25 years (well over one year).

34. Plaintiff had worked over 1250 hours in the previous year.

35. Defendant has and continues to employ over 50 employees per calendar year for at least the last 5 years, and Defendant engages in a variety of business relationships generating revenue by operating retail stores.

36. Plaintiff had been approved for intermittent FMLA due to flare ups of his hip conditions and related impairments.

37. Plaintiff utilized intermittent FMLA leave and was terminated while he had still been approved for it. Plaintiff had also experienced animosity from his management for taking time off for medical reasons at times.

38. Plaintiff seeks relief herein for being unlawfully suspended and separately terminated for: (a) taking FMLA qualifying leave; (b) in consideration of his FMLA leave; (c) to punish Plaintiff for using and seeking FMLA leave; (d) to deter Plaintiff from further taking FMLA leave; and (e) and for not being reinstated to the same or similar position he held merely for use of FMLA leave.

39. These actions as aforesaid constitute interference and retaliation violations of the FMLA.

**WHEREFORE**, Plaintiff prays that this Court enter an Order providing that:

A. Defendant is to compensate Plaintiff, reimburse Plaintiff, and make Plaintiff whole for any and all pay and benefits Plaintiff would have received had it not been for Defendant's illegal actions, including but not limited to back pay, front pay, salary, pay increases, bonuses, insurance, benefits, training, promotions, reinstatement, and seniority.

B. Plaintiff is to be liquidated damages, as permitted by applicable law, in an amount believed by the Court or trier of fact to be appropriate to punish Defendant for its willful, deliberate, malicious and outrageous conduct and to deter Defendant or other employers from engaging in such misconduct in the future;

C. Plaintiff is to be accorded other equitable and legal relief as the Court deems just, proper, and appropriate;<sup>2</sup>

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<sup>2</sup> Plaintiff does not seek punitive damages and/or emotional distress damages pursuant to the FMLA, however, Plaintiff plans to amend this complaint to include claims under the ADA and PHRA if and when such claims

D. Plaintiff is to be awarded the costs and expenses of this action and reasonable attorney's fees as provided by applicable federal and state law.

Respectfully submitted,

**KARPF, KARPF & CERUTTI, P.C.**

By: 

Ari R. Karpf, Esq.  
3331 Street Road  
Two Greenwood Square, Suite 128  
Bensalem, PA 19020  
(215) 639-0801

Dated: July 16, 2014

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become administratively exhausted. *See note 1, supra.* Plaintiff will seek punitive damages and/or emotional distress damages pursuant to those laws.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

FREDRICK CAPPs

**CIVIL ACTION**

v.

MONDELEZ INTERNATIONAL, INC.

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

<u>Date</u>	<u>Ari R. Karpf</u> Attorney-at-law	<u>Plaintiff</u> Attorney for
<u>(215) 639-0801</u>	<u>(215) 639-4970</u>	<u>akarpf@karpf-law.com</u>
<u>Telephone</u>	<u>FAX Number</u>	<u>E-Mail Address</u>

## UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 2734 Bellview Drive, Bensalem, PA 19020

Address of Defendant: 12000 Roosevelt Boulevard, Philadelphia, PA 19116

Place of Accident, Incident or Transaction: Defendants place of business

(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes  No

Does this case involve multidistrict litigation possibilities?

Yes  No

*RELATED CASE, IF ANY:*

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?

Yes  No

2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?

Yes  No

3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?

Yes  No

4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?

Yes  No

**CIVIL: (Place ✓ in ONE CATEGORY ONLY)**

A. *Federal Question Cases:*

1.  Indemnity Contract, Marine Contract, and All Other Contracts

2.  FELA

3.  Jones Act-Personal Injury

4.  Antitrust

5.  Patent

6.  Labor-Management Relations

7.  Civil Rights

8.  Habeas Corpus

9.  Securities Act(s) Cases

10.  Social Security Review Cases

11.  All other Federal Question Cases

(Please specify) \_\_\_\_\_

B. *Diversity Jurisdiction Cases:*

1.  Insurance Contract and Other Contracts

2.  Airplane Personal Injury

3.  Assault, Defamation

4.  Marine Personal Injury

5.  Motor Vehicle Personal Injury

6.  Other Personal Injury (Please specify) \_\_\_\_\_

7.  Products Liability

8.  Products Liability — Asbestos

9.  All other Diversity Cases

(Please specify) \_\_\_\_\_

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Ari R. Karpf, counsel of record do hereby certify:

Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

Relief other than monetary damages is sought.

DATE: 7/10/14



Attorney-at-Law

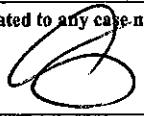
ARK2484

Attorney I.D.# 91538

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 7/10/14



Attorney-at-Law

ARK2484

Attorney I.D.# 91538

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

## I. (a) PLAINTIFFS

CAPP, FREDRICK

## DEFENDANTS

MONDELEZ INTERNATIONAL, INC.

(b) County of Residence of First Listed Plaintiff Bucks  
(EXCEPT IN U.S. PLAINTIFF CASES)County of Residence of First Listed Defendant Philadelphia  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Karpf, Karpf &amp; Cerutti, PC, 3331 Street Road, Two Greenwood Square, Suite 128, Bensalem, PA 19020, (215) 639-0801, akarpf@karpf-law.com

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State	PTF	DEF	PTF	DEF
<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTINGENCIES	TORTS	CONTRACTS	PROPERTY	SOCIAL SECURITY	CRIMINAL	OTHER SUBJECT MATTER
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision	
<input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<input type="checkbox"/> Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision
				<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding  2 Removed from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from Another District (specify)  6 Multidistrict Litigation

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
Family and Medical Leave Act "FMLA" (29USC2601)

## VI. CAUSE OF ACTION

Brief description of cause:  
Violations of the FMLA.

## VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMANDS CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE



DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IPP

JUDGE

MAG. JUDGE